1

2

3

4

5

6

7

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8   JAMES C. GARRETT,   )
)
9   Petitioner,   )   CASE NO. C05-898RSM
)
10   v.   )
)
11   ROB McKENNA,   )   ORDER ADOPTING REPORT AND
)   RECOMMENDATION
12   Respondent.   )
     _____)

13

14   On August 29, 2005, Monica J. Benton, United States Magistrate Judge, issued her Report

15   and Recommendation ("R&R") in this case, recommending that the petition be dismissed for failure

16   to name a proper respondent. (Dkt. #16). Petitioner responded with a "Motion to Amend Writ of

17   Habeas Corpus To Add Proper Respondents and For Removal of Magistrate Monica Benton." (Dkt.

18   #17). Having reviewed the motion, the Court believes it is more properly construed as Objections to

19   the R&R. Respondent has filed a response to the motion, and petitioner has filed a reply. (Dkts. #18

20   and #19).

21   The Court, having reviewed these briefs, along with the petition for writ of habeas corpus,

22   Judge Benton's R&R, and the remainder of the record, does hereby find and Order:

23   (1)   The Court ADOPTS the Report and Recommendation (Dkt. #16), and DENIES

24   petitioner's Motion to Amend. (Dkt. #17). While petitioner now asks the Court to

25   allow him leave to amend his habeas corpus petition, his request is untimely.

26   ORDER OF DISMISSAL

1   Petitioner was notified in respondent's Answer that he had named the incorrect

2   respondent. Despite that notification, petitioner failed to amend his petition. Instead,

3   it was not until after Judge Benton recommended that his petition be dismissed for

4   failure to name the correct respondent, that petitioner finally requested such

5   amendment. Moreover, even if petitioner's motion to amend is not untimely,

6   petitioner has asked to name two people that are also incorrect respondents.

7   Accordingly, the Court denies petitioner's request to amend his habeas petition.

8   (2)   The remainder of petitioner's arguments pertain to issues that were not raised in Judge

9   Benton's R&R. Accordingly, the Court declines to address them.

10   (3)   Petitioner's request to remove Judge Benton from his case is STRICKEN AS MOOT.

11   Judge Benton is no longer assigned to this action.

12   (4)   Petitioner's 28 U.S.C. § 2254 petition is DENIED and this action is DISMISSED with

13   prejudice

14   (5)   The Clerk is directed to send copies of this Order to petitioner, to counsel for

15   respondent, and to Judge Benton.

16   DATED this 14th day of October, 2005.

17

18

19   RICARDO S. MARTINEZ
                                                       UNITED STATES DISTRICT JUDGE
20

21

22

23

24

25

26   ORDER OF DISMISSAL